IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 4790 of 2005

Between:

M/s. Sahadeva Reddy Sweets, 16-11-477/6/1/1, Dilsukhnagar, Hyderabad,
Rep. by its Prop. Sri P. Sahadeva Reddy, S/o. P. Venkata Reddy, Aged 41 Years, R/o. Hyderabad.

..... PETITIONER

AND

1 The Municipal Corporation of Hyderabad, Rep. by its Commissioner, Tankbund Road,
Hyderabad.
2 The Additional Commissioner (Finance), Advertisement Section, M.C.H., Tankbund Road, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly one in the nature of WRIT OF MANDAMUS, declaring the action of the respondents in treating the name Board/board frames fixed by the Petitioner on the parapet wall of its business place are as covered by Section 420 and 421 of H.M.C. Act, and consequently demanding the fee vide proceedings No. 17/AFF/Advt./MCH/2004-2005 dated 27-1-2005 for the same is illegal, arbitrary, capricious and in violation of the principles of natural justice and to pass such other order or orders as this Hon'ble Court deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.P.SRIHARI

Counsel for the Respondent No.: MR.RAMA RAO GHANTA

The Court made the following :

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.NO.4790 OF 2005

ORDER:

The petitioner is a business undertaking and had its establishment within the limits of the Municipal Corporation of Hyderabad, the 1st respondent. It erected a signboard at the place of its business. The 1st respondent treated it as an advertisement and levied a sum of Rs.15,500/-, as advertisement fee, through proceedings dated 27-01-2005. The petitioner challenges the same.

Learned counsel for the petitioner submits that the board erected by the petitioner cannot be treated as an advertisement and that it is only a signboard. He contends that the provisions of Section 421 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act'), are not applicable for mere signboards, and in that view of the matter, the impugned notice is liable to be set aside. He further contends that the petitioner was not afforded any opportunity, before the advertisement fee was levied.

Learned Standing Counsel for the Municipal Corporation of Hyderabad submits that the signboard erected by the petitioner is illuminated, and in that view of the matter, it deserves to be treated as an advertisement. He submits that the impugned notice was issued in terms of Section 421 of the Act, and no interference is called for.

While the petitioner contends that what is displayed by it is only a signboard, the 1st respondent insists that it is an advertisement, within the meaning of Section 421 of the Act. This Court cannot record any finding on such disputed questions of fact. Before levying the advertisement fee, the respondents ought to have issued a notice

to the petitioner, directing it to explain, as to why the board displayed by it, cannot be treated as an advertisement. It is only when the explanation offered by the petitioner was not satisfactory, or when a finding was recorded on consideration of such explanation, that the petitioner had displayed an advertisement board; the fee could have been levied. No such exercise was undertaken by the respondents. Straightaway, a demand notice was issued. Such a course of action is impermissible. Instead setting at naught the entire proceedings, this Court is of the view that the impugned notice can be treated as the one, requiring the petitioner to submit explanation and to enable it to submit the same.

Hence, the writ petition is disposed of, directing that the impugned notice dated 27-01-2005, shall be treated as a show cause notice, and the petitioner shall be entitled to submit its explanation, within three weeks from today, if it intends to dispute the liability. It shall be competent for the 1st respondent to pass appropriate speaking orders, after considering the explanation that may be submitted by the petitioner. The liability of the petitioner shall depend on the nature of orders the respondents may pass, and till then, no coercive steps shall be taken against the petitioner, to recover any amount under the impugned notice. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt.11-03-2005

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To

1 The Municipal Corporation of Hyderabad, Rep. by its Commissioner, Tankbund Road,
Hyderabad.
2 The Additional Commissioner (Finance), Advertisement Section, M.C.H., Tankbund Road, Hyderabad.

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